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On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 2017CA1502	
ROCKY MOUNTAIN GUN OWNERS, a Colorado nonprofit corporation; NATIONAL ASSOCIATION FOR GUN RIGHTS, INC., a Virginia nonprofit corporation; and JOHN A. STERNBERG, Petitioners v. JARED S. POLIS, in his official capacity as Governor of the State of Colorado, Respondent	▲ COURT USE ONLY ▲ <hr/>
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<p align="center">BRIEF OF AMICI CURIAE THE CITY AND COUNTY OF DENVER AND THE CITY OF BOULDER IN SUPPORT OF RESPONDENT</p>	

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The amici curiae brief complies with the applicable word limit set forth in C.A.R. 29(d).

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I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

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ISSUES ON APPEAL

This brief addresses one of the four issues for which review has been granted: Whether Colorado HB 1224 (codified at Colo. Rev. Stat. §§ 18-12-301–303) violates the right to bear arms set forth in article II, section 13 of the Colorado Constitution.

INTEREST OF AMICI CURIAE

Amici the City and County of Denver (“Denver”) and the City of Boulder (“Boulder”) are two of Colorado’s largest and most densely populated cities, together representing and protecting more than 800,000 residents. Amici are the primary providers of law enforcement in their jurisdictions and the first line of defense against the devastating harms caused by gun violence—including by the large-capacity magazines (LCMs) at issue in this case.

In amici’s experience, prohibiting LCMs is critically important to protecting both the public and law enforcement personnel. LCMs increase a firearm’s lethality and are often used in connection with crime, mass shootings, and violence against law enforcement, as well as increasingly in day-to-day gun violence. Indeed, just days ago, LCMs were used, once again, to perpetrate devastating mass shootings in El Paso, Texas and Dayton, Ohio—killing 31 and injuring at least 50 more. Amici have also found that LCMs offer no meaningful benefit in civilian self-defense situations.

That is why both Denver and Boulder have enacted their own local LCM prohibitions¹ and why they strongly support HB 1224, the state LCM prohibition before this Court.

Indeed, amici’s experience—both in adopting and implementing their own LCM prohibitions and in supporting and enforcing HB 1224 closely aligns with the evidence introduced by the State at trial in this case and relied on by courts below in upholding the state law as constitutional. More specifically:

Denver. Denver—the largest and most densely populated city in Colorado, with over 700,000 residents in 153 square miles²—has prohibited certain LCMs for almost thirty years.³ And Denver’s current law corresponds to HB 1224: LCMs with the capacity to hold more than 15 rounds are prohibited.⁴

Denver first acted against LCMs in 1989, as part of an ordinance prohibiting the possession and sale of assault weapons. In response to “a record number of related homicides and injuries to citizens and law enforcement officers,” the Denver

¹ Denver, Colo. Rev. Mun. Code § 38-130(i); Boulder, Colo., Rev. Code §§ 5-8-2, 5-8-10, 5-8-28.

² U.S. Census Bureau, *Quick Facts: City of Denver, Colorado*, <https://bit.ly/2Mdo8zY>.

³ See Denver, Colo., Ord No. 0669, §1 (Nov. 7, 1989).

⁴ Denver, Colo., Rev. Mun. Code § 38-130(i).

City Council enacted a prohibition on weapons with “a capacity to fire an inordinately large number of rounds without reloading, and . . . designed primarily for military or antipersonnel use.”⁵ This included a prohibition on the carrying, storage, and possession of ammunition magazines “which will hold or may be modified to hold 21 or more rounds.”⁶

In *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994), this Court upheld Denver’s ordinance, including its LCM prohibition, against a challenge that it violated the right-to-bear-arms provision in article II, section 13 of the state constitution. *Id.* at 333. Relying in part on the testimony of Denver’s then-chief of police that the prohibited weapons were “becoming the weapons of choice for drug traffickers and other criminals,” this Court concluded that “the ordinance is reasonably related to a legitimate governmental interest and constitutes a valid exercise of the state’s police power on the right to bear arms in self-defense.” *Id.* at 332–33.

In 2007, Denver amended its law to eliminate prohibitions on certain makes and models of guns, which were deemed unnecessary given the existing prohibitions

⁵ Denver, Colo., Ord. No. 0669; *see* Denver, Colo. Rev. Mun. Code § 38-130(a).

⁶ Denver, Colo., Ord. No. 0669.

on LCMs. Then, last year, Denver modified its LCM prohibition to conform to HB 1224.⁷ Now, under Denver’s ordinance, just as under state law, magazines with the capacity to hold more than 15 rounds are prohibited.⁸

Boulder. Boulder, too, has adopted a local ordinance prohibiting LCMs.⁹ Like Denver’s ordinance, and like state law, it prohibits pistol magazines with the capacity to accept more than 15 rounds¹⁰ For non-pistol magazines, however, Boulder has gone even further, generally prohibiting any LCM “with the capacity to accept more than 10 rounds.”¹¹

Boulder enacted this LCM provision last year, primarily in response to “a significant increase in mass shootings over the last two decades, ” and a recognition that “[a]ssault weapons and/or large capacity ammunition magazines have been the tools of choice” in the deadliest of these mass shootings.¹² The City Council further

⁷ Denver, Colo., Ord. No. 1400-17, § 3, (Jan. 24, 2018).

⁸ Denver, Colo. Rev. Mun. Code § 38-130(i)

⁹ Boulder, Colo., Ordinance 8245 (May 15, 2018); Boulder, Colo., Ordinance 8259 (June 19, 2018); *see* Boulder, Colo., Rev. Code §§ 5-8-2, 5-8-10, 5-8-28.

¹⁰ *See* Boulder, Colo., Rev. Code § 5-8-2 (definition of “[l]arge-capacity magazine”).

¹¹ *Id.*

¹² Boulder, Colo., Ordinance 8245 (findings A–N).

found that Boulder’s “dense population,” “large number of public events,” and “high concentration of students” leaves it “uniquely vulnerable to mass shooters” and “creates a higher than normal level of risk for the community.”¹³ Boulder thus acted to prohibit LCMs “as a reasonable exercise of the city’s police powers to restrict access to weapons that are of the type used in mass shootings and that are designed to kill large numbers of people quickly.”¹⁴

SUMMARY OF ARGUMENT

Colorado HB 1224 is constitutional. Amici agree with Respondent and amicus curiae the Colorado Municipal League that this Court should apply the “reasonable exercise” standard of review set forth in *Robertson*, 847 P.2d at 333. Under this standard, HB 1224 is constitutional because it is a reasonable exercise of the state’s police power.¹⁵ An act is within the state’s police power if it is “reasonably related to a legitimate governmental interest such as the public health, safety, or welfare.”

¹³ *Id.*

¹⁴ *Id.* Like the State, Boulder currently faces litigation challenging its LCM law—including a claim, as in this case, that the law violates the state constitutional right to bear arms. Just as here (and just as in *Robertson*, 874 P.2d at 333), these challenges are without merit.

¹⁵ However, even if this Court elects to apply the intermediate scrutiny standard of review that has been favored in the federal courts, HB 1224 still passes constitutional muster for the reasons set forth herein.

Id. at 331. Here, HB 1224’s prohibition on LCMs is reasonably related to the state’s public health, safety, and welfare, for two overarching reasons.

First, LCMs make gun violence incidents more dangerous and more deadly. This is true of mass shootings, as the District Court and Court of Appeals in this case found. And it is also increasingly true with respect to day-to-day gun violence and violence against law enforcement officers.

Second, LCMs are not necessary, and rarely used, for self-defense. Rather, as the Court of Appeals emphasized, “people almost never fire weapons in self-defense using more than two or three bullets.” *Rocky Mountain Gun Owners v. Hickenlooper*, 2018 COA 149, ¶ 34 (“*RMGO*”). As discussed below, that finding comports with amici’s on-the-ground experience and the empirical study on this question as well.

ARGUMENT

I. The Use of LCMs Makes Mass Shootings and Other Gun Violence Incidents Deadlier.

The evidence in the record shows, as confirmed by the lower courts, that the use of LCMs results in more people being shot, more injuries per victim, and more deaths. That comports with the concerns of amici and is why they have taken their own steps to prohibit this weaponry. And the data backs all of this up: social science research consistently demonstrates that the use of LCMs—whether in mass

shootings or day-to-day gun violence—makes shootings substantially more dangerous and more deadly. Evidence also shows that LCMs are disproportionately used in the murders of police officers. By prohibiting the sale of LCMs, HB 1224 is a reasonable, and reasonably tailored, attempt to address this serious public safety concern—and thus constitutional.

A. Mass Shootings Involving LCMs Result in More Injuries and More Deaths.

The impact of LCMs on mass shootings is the focus of this litigation. And properly so. As the District Court found and the Court of Appeals affirmed, “LCMs are used more often in mass shootings than in other crimes,” and “[t]he use of LCMs results in victims being struck by more bullets, which causes a greater chance of death.” *RMGO*, ¶ 21; *Rocky Mountain Gun Owners v. Hickenlooper*, No. 2013CV33879, at 3 (Dist. Ct. Denver Cty. July 28, 2017); *see also, e.g., N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242, 263–64 (2d Cir. 2015) (finding that LCMs “result in ‘more shots fired, persons wounded, and wounds per victim than do other gun attacks’”). This aligns with the experience and understanding of both Boulder (which, as noted, *see supra* pp. 4–5, expressly relied on the dangers of mass shootings in enacting its own LCM prohibition) and Denver. Social science and empirical research confirm the point.

Mass shooting incidents involving LCMs result in significantly more shooting victims and deaths. For example, a recent report published by the gun violence prevention organization Everytown for Gun Safety, which analyzed data on mass shootings occurring from 2009 to 2017, found that LCMs were used in 58% of the mass shootings in which magazine capacity was known. In those shootings, *twice* as many people were killed and *14 times* as many were injured than in shootings where LCMs were not used. Everytown for Gun Safety, *Mass Shootings in the United States: 2009–2017* (Dec. 6, 2018), <https://every.tw/1XVAmcc> [hereinafter *Everytown 2018 Mass Shootings Report*]. A similar study, examining public mass shootings that occurred between 1982 and 2012, found that 53% involved the use of an LCM or an assault weapon. Mark Follman et al., *US Mass Shootings, 1982–2012: Data from Mother Jones’ Investigation*, Mother Jones, <https://bit.ly/1kYwns3>; see Tr. 5/2/17 202:5–7, 21–23 (Webster). A further analysis of that study leaves no doubt as to impact of LCMs, as those mass shootings in which LCMs were used resulted in *60% more deaths* and *300% more injuries*. Luke Dillon, *Mass Shootings in the United States: An Exploratory Study of the Trends from 1982–2012*, Thesis for Master of Arts in Criminology, Law and Society, George Mason University (2013), <http://mars.gmu.edu/xmlui/handle/1920/8694>.

As the courts below found, LCMs are also invariably used in the most deadly and injurious events. *RMGO*, ¶¶ 2–3, 21–26. These include:

- The attack on a high school in Columbine that killed thirteen and injured twenty-four;
- The shooting at a movie theater in Aurora that killed twelve and injured seventy;
- The attack at an office party in San Bernardino, California, that resulted in fourteen deaths and twenty-two injuries;
- The attack on a school in Newtown, Connecticut that killed twenty-six people;
- The massacre of forty-nine people and wounding of fifty-three more in a nightclub in Orlando, Florida;
- The attack in Las Vegas, Nevada in which the shooter used dozens of assault weapons and LCMs to fire hundreds of rounds into a concert crowd resulting in the death of fifty-nine people and the injury of over 800 more, 400 of those directly as a result of gunshot wounds and/or shrapnel;
- The attack on a high school in Parkland, Florida that resulted in the death of seventeen people and wounding of seventeen more¹⁶; and

¹⁶ The federal district court in *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1161, 1177 (S.D. Cal. 2019), *appeal docketed*, No. 19-55376 (9th Cir. Apr. 4, 2019), which is relied on heavily by petitioners, asserted that the Parkland shooter used only 10-round magazines to carry out his attack at Marjory Stoneman Douglas High School (MSD). But that is false. In its official report, the MSD Public Safety Commission made clear that LCMs were used, noting that “[e]ight 30- and 40-round magazines were recovered from the scene,” some of which “had swastikas etched into them.” MSD Public Safety Commission, *Initial Report to the Governor, Speaker of the House of Representatives and Senate President*, at 240, 262–63 (Jan.

- The shooting at a church in Sutherland Springs, Texas that resulted in twenty-six deaths and twenty injuries.¹⁷

Early reports from the country's two most recent mass shootings—at a Walmart in El Paso, Texas, resulting in at least twenty-two deaths and two dozen injuries, and in a busy nightlife district in Dayton, Ohio, which killed nine and injured twenty-seven more—indicate that LCMs were used in both of those incidents as well.¹⁸ Indeed, in each of the ten deadliest mass shootings in modern American history, an LCM was used to perpetrate the crime.¹⁹

2, 2019), <https://bit.ly/2YWjWKN>; see also Everytown Law, *Why the Gun Lobby's Favorite Court Decision Is Wrong*, Medium (May 28, 2019), <https://bit.ly/2O7iO2K>.

¹⁷ See *Everytown 2018 Mass Shootings Report*, <https://everytownresearch.org/reports/mass-shootings-analysis>; Everytown, *Appendix to Mass Shootings in the United States: 2009–2016*, at 3, 6, 24, 26 (2017), <https://every.tw/2JPBIVz>; Violence Policy Center, *Mass Shootings in the United States Involving High-Capacity Ammunition Magazines* (June 2019), http://vpc.org/fact_sht/VPCshootinglist.pdf [hereinafter *VPC Report*].

¹⁸ See, e.g., Larry Buchanan & K.K. Rebecca Lai, *How State Laws Allowed Military-Style Guns in Dayton and El Paso Shootings*, N.Y. Times (Aug. 5, 2019), <https://nyti.ms/2YNQ5Qy>; Nick Perzenstadler & Uriel J. Garcia, *The Guns Used to Kill in Dayton and El Paso Were Legal—High-Capacity Options Included*, USA Today (Aug. 5, 2019), <https://bit.ly/31vkmVX>.

¹⁹ These shootings are: Las Vegas, Nevada (58 fatalities); Orlando, Florida (49); Blacksburg, Virginia (32); Newtown, Connecticut (26); Sutherland Springs, Texas (26); Killeen, Texas (23); El Paso, Texas (22); San Ysidro, California (21); Parkland, Florida (17); and Austin, Texas (15). See Bonnie Berkowitz et al., *The Terrible Numbers that Grow with Each Mass Shooting*, Wash. Post, (Oct. 1, 2017)

Finally, and perhaps most significantly, research shows that prohibitions on LCMs work. State prohibitions on large-capacity magazines are correlated with a 63% lower rate of shootings with three or more injuries or deaths, not including the shooter. See Sam Petulla, *Here is 1 Correlation Between State Gun Laws and Mass Shootings*, CNN, (Oct. 5, 2017), <https://cnn.it/2J4sWCC> (noting Boston University Professor Michael Siegel’s conclusion that “[w]hether a state has a [LCM] ban is the single best predictor of the mass shooting rate in that state”). Mass shootings were also 70% less likely to occur between 1994 and 2004, when the federal prohibition on assault weapons and large-capacity magazines was in effect. See Charles DiMaggio, *Changes in U.S. Mass Shooting Deaths Associated with the 1994–2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 J. of Trauma and Acute Care Surgery 11, 13 (2018) <https://goo.gl/R8qSgK>.²⁰

(continually updated), <https://wapo.st/2CMznZz>; VPC Report, http://vpc.org/fact_sht/VPCshootinglist.pdf.

²⁰ See also Louis Klarevas, *Rampage Nation: Securing America from Mass Shootings* 240–43 (2016) (finding that, compared with the 10-year period before the federal ban went into effect, the number of gun massacres where six or more people were shot and killed fell by 37% during the ban period and the number of people dying from gun massacres fell by 43%, and that gun massacres increased by 183% and massacre deaths by 239% in the decade after the ban lapsed); Christopher Ingraham, *It’s Time to Bring Back the Assault Weapons Ban, Gun Violence Experts Say*, Wash. Post., (Feb. 14, 2018), <https://wapo.st/2JjFlSk> (discussing Klarevas’s research).

In short, social science supports amici’s public safety concerns and reinforces what the Court of Appeals held: HB 1224 is “reasonably related to the legitimate governmental purpose of reducing deaths from mass shootings.” *RMGO*, ¶ 25. That is more than enough to uphold the challenged law.

**B. LCMs Are Increasingly Being Used in Daily Gun Violence—
Making Such Daily Violence, Too, More Dangerous and More
Deadly.**

The public safety dangers from LCMs are not limited to mass shootings. The parties in this litigation have focused on the relationship between LCMs and mass shootings, and the court below stated that LCM prohibitions “have not been shown to reduce overall gun violence or deaths from use of guns.” *RMGO*, ¶ 26. But, as noted, *see supra* pp. 1–5, amici’s concerns with LCMs are broader than their impact on these devastating mass shootings alone. And social science and empirical data, of which this Court should be aware, demonstrate that those concerns are valid ones.

Several reports indicate that criminals are increasingly using LCMs in day-to-day gun violence, as evidenced by the increasing number of LCMs recovered by police. Indeed, a recent study found that “LCM firearms . . . appear to account for 22 to 36% of crime guns in most places, with some estimates upwards of 40% for cases involving serious violence.” Christopher S. Koper et al., *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: An Updated*

Examination of Local and National Sources, J. Urban Health (Oct. 2017), <https://bit.ly/2MRVqkd>.²¹ The rise in LCM use runs counter to the trend that existed during the federal LCM prohibition between 1994–2004, which researchers found was effective in reducing the use of LCMs by criminals. David Fallis, *Data Indicate Drop in High Capacity Magazines During Federal Ban*, Washington Post, (Jan. 10, 2013), <http://wapo.st/2wV9EMX> (noting that the percentage of LCM-equipped guns recovered by Virginia police decreased during the federal LCM prohibition, but then more than doubled between its expiration in 2004 and 2013).²²

Furthermore, when criminals use LCMs in violent crimes and shootings, they generally fire more shots and cause more injuries.²³ For example, a study of Milwaukee homicides found that those killed with guns containing LCMs had on

²¹ See also Tr. 3/4/13, 21:6–7 (legislative testimony of David Chipman, retired ATF special agent) (noting that LCMs “are commonly used in gun crimes”).

²² See also Tr. 3/4/13, 21:11–15 (Chipman) (noting a 2010 survey of the Police Executive Research Forum, which reported that “since regulation of magazine capacity expired in 2004, 38 percent of police agencies reported seeing increases in the use of high-capacity magazines by criminals”).

²³ Christopher Koper et al., *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003*, National Institute of Justice (2004), <http://bit.ly/2vBTGTX> (finding that, based on a study of incidents in Baltimore, handguns associated with gunshot injuries are up to 50% more likely to have LCMs than handguns used in other crimes and that guns used in shootings resulting in injuries are nearly 26% more likely to have LCMs).

average one additional gunshot injury than when a gun without an LCM was used, and the Maryland medical examiner's office reported that the number of cadavers with ten or more bullets more than doubled between 2006 and 2016. *See, e.g.,* Jeffrey Roth & Christopher Koper, *Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994: Final Report*, Urban Institute, (1997), <http://urbn.is/2wQKkrA>; Justin George, *Shoot to Kill: Why Baltimore is One of The Most Lethal Cities in America*, Baltimore Sun (Sept. 30, 2016), <https://bsun.md/2da4nci>.²⁴ Shootings with more injuries invariably lead to more deaths. One study found that gunshot victims shot twice are 60% more likely to die than those shot once. *See* Koper, *supra* note 24, at 87; *see also* Daniel W. Webster et al., *Epidemiologic Changes in Gunshot Wounds in Washington, D.C. 1983–1990*, 127 *Archives of Surgery* 694 (1992) (finding that the fatality rate for multiple chest wounds is 61% higher than the fatality rate for a single chest wound). This finding is supported by the correlation between the prevalence of LCMs and increases in lethal shootings reported in several American cities. *See* Rachel Rettner, *Gunshot Wounds Are Getting Deadlier, One Hospital Finds*, LiveScience.com (June 14,

²⁴ *See also* Tr. 5/2/17, 208:25–213:2 (Webster) (describing another study examining the effect of increased ammunition capacity on increasing the number of shots fired, persons wounded, and number of wounds).

2016), <https://bit.ly/2HBnMO9> (asserting that increases in gunshot death rates could be connected to the use of LCMs).²⁵

And, as courts have recognized, because they result in more shots being fired, LCMs also create the opportunity for a dramatic increase in the number of errant shots. *See Kolbe v. Hogan*, 849 F.3d 114, 127 (4th Cir. 2017) (en banc) (“[W]hen inadequately trained civilians fire weapons equipped with large-capacity magazines, they tend to fire more rounds than necessary and thus endanger more bystanders.”), *cert. denied*, 138 S. Ct. 469 (2017); *Heller v. District of Columbia*, 670 F.3d 1244, 1263–64 (D.C. Cir. 2011). One recent study tracking stray-bullet shooting events concluded that, during a one-year period alone, there were 284 stray-bullet shooting events, during which 65 people died and an additional 252 people were injured. Garen J. Wintemute, et al., *Epidemiology and Clinical Aspects of Stray Bullet Shootings in the United States*, 73 J. of Trauma and Acute Care Surgery 215 (2012). This is not a small concern in Colorado—and particularly not in Denver and Boulder, two densely populated cities, *see supra* pp. 1–5—where the victims of shootings are not always the intended targets. *See, e.g.*, Kirk Mitchell, *Man ID’d as Innocent Bystander Killed in Downtown Denver Shootout Between Rival Crips Gang*

²⁵ *See also* George, *supra*, at 17 (attributing increased shooting lethality, in part, to increasingly lethal tactics enabled by LCMs).

Members, Denver Post (Nov. 26, 2018), <https://dpo.st/2KimkmN>; DenverChannel.com, *Man Wanted for Shooting Bystander in Bar Fight at Owsley's Golden Road in Boulder* (Nov. 1, 2016), <https://bit.ly/2YHOxLP>.

Accordingly, even outside the particularly tragic context of mass shootings, social science research demonstrates that LCMs exacerbate the dangers of gun crime—which provides additional grounds to affirm here.

C. LCMs Are Disproportionately Used in Shootings of Police Officers.

Amici's concerns about LCMs also stem from the disproportionate risk they pose to law enforcement officers. Denver expressly stated as much in adopting its own LCM prohibition. *See supra* pp. 2–3. It was stressed by law enforcement witnesses during the legislative debate on HB 1224. *See* Tr. 2/12/13, 15:16–18; Tr. 3/4/13, 21:4–7 (Chipman) (noting that “high-capacity magazines place our law enforcement officers directly in harm’s way” and “are commonly used in police murders”). And, as with mass shootings and day-to-day gun violence, such concerns are entirely consistent with the empirical data, which shows that LCMs are frequently used in connection with violence against law enforcement. *See, e.g.*, Koper, *Criminal Use*, *supra*, at 7 (“LCM weapons overall account for 41% of the

weapons used to kill police officers.”).²⁶ For this reason, too, the State’s LCM prohibition should be upheld.

II. There Is No Evidence that LCMs Are Useful to, or Routinely Used by, Law-Abiding Citizens in Self-Defense.

As the District Court found and the Court of Appeals affirmed, HB 1224 also “does not negatively impact a Coloradan’s constitutional right to bear arms in self-defense because people almost never fire weapons in self-defense using more than two or three bullets.” *RMGO*, ¶ 34. That was the experience of the two law enforcement officers to testify at trial on this issue. Tr. 5/3/17, 28:4–15, 30:1–31:6, 31:13–20 (Montgomery); Tr., 5/3/17, Tr. 44:9–25, 47:1–9 (Corsentino). And it aligns with the on-the-ground experience and understanding of amici’s law enforcement personnel as well.²⁷ LCMs are not necessary or important to self-defense.

²⁶ See also Tr. 2/12/13, 15:18–22; Tr. 3/4/13 21:8–11 (Chipman) (referencing U.S. Department of Justice study showing that LCMs “are used . . . in 31 to 41% of fatal police shootings); Tr. 5/2/17, 207:24–208:24 (Webster).

²⁷ See also *Colo. Outfitters Ass’n v. Hickenlooper*, 24 F. Supp.3d 1050, 1069–70 (D. Colo. 2014) (“Of the many law enforcement officials called to testify, none were able to identify a single instance in which they were involved where a single civilian fired more than 15 shots in self-defense.”), *vacated on standing grounds*, 823 F.3d 537 (10th Cir. 2016).

Social science research, once again, reinforces this conclusion. Dr. Jeffrey Zax, one of the State’s experts in this case, reported on Colorado-specific data. He analyzed defensive gun use in home invasions and robberies in a home in fifty-four Colorado counties over a ten-year period and found only *two incidents* where a gun known to contain an LCM was displayed and *zero incidents* in which a person defending their home fired more than fifteen rounds. Tr., 5/5/17, 58:8–60:4 (Zax).

National data tells the same story. A recent study drawing from a National Rifle Association database of notable defensive-gun-use incidents found that, on average, *only 2.2 rounds* were fired per incident. See Declaration of Lucy P. Allen, *Ass’n of N.J. Rifle & Pistol Clubs v. Grewal*, No. 3:18-cv-10507-PGS-LHG, at ¶ 5 (D.N.J. July 5, 2018) (“Allen Decl.”); see also Claude Werner, “The Armed Citizen – A Five Year Analysis,” <https://bit.ly/2EPoDIS> (separate study of NRA database from an earlier period likewise finding an average of 2.2 rounds fired per defensive-gun-use incident). And in *only 2 of the 736* incidents studied, or *0.3%*, did the defender fire more than even ten rounds. See Allen Decl. ¶ 10. A study based on a random sampling of 200 media reports on defensive-gun-use incidents reached similar findings: an average of *2.34 shots* were fired per incident, five or fewer shots were fired in 195 of the 200 incidents studied, or 97.3 %, and in *zero incidents* were more than even ten shots were fired. See *id.* ¶¶ 7–18.

The frequent and catastrophic use of LCMs in mass shootings, day-to-day gun violence, and police shootings, and the fact that magazines containing more than fifteen rounds are virtually never used in defensive gun use situations, shows that HB 1224 is closely tailored to address Colorado's compelling interest in mitigating gun violence while not impinging on the protected right to self-defense. Thus, under either the *Robertson* reasonableness standard amici urge this Court to apply or the intermediate scrutiny analysis favored by the federal courts, a law that furthers several compelling government interests while imposing essentially no burden on constitutionally protected conduct is constitutional.

CONCLUSION

Amici's experiences with gun violence and LCMs, both as legislators and in law enforcement, are not peculiar or unique. They are instead illustrative and instructive. They confirm and reinforce what the courts below found, what the record evidence in this case demonstrates, and what the leading research makes clear: laws prohibiting LCMs are "reasonably related," *Robertson*, 874 P.2d at 333, to the government's unquestionably strong interest in reducing firearm deaths and injuries, and they do not negatively affect an individual's ability to use arms in self-defense.

For these reasons, the Court of Appeals' decision should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2019, a true and correct copy of the foregoing **BRIEF OF AMICI CURIAE THE CITY AND COUNTY OF DENVER AND THE CITY OF BOULDER IN SUPPORT OF RESPONDENT** was served via the Colorado Courts E-Filing System on the following:

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